

MONTGOMERY COUNTY, MARYLAND
AND
THE WASHINGTON WALDORF SCHOOL, INCORPORATED

FIRST AMENDMENT TO SUBLEASE AGREEMENT
AND ELECTION TO RENEW

THIS AGREEMENT made and executed this 30 day of September, 1993 by and between MONTGOMERY COUNTY, MARYLAND, a body politic and corporate, (hereinafter referred to as "Lessor"), and THE WASHINGTON WALDORF SCHOOL, INCORPORATED, (hereinafter referred to as "Lessee").

WITNESSETH

WHEREAS, Lessor and Lessee are parties to a Sublease Agreement dated July 18, 1983 (hereinafter referred to as the "Lease"), which is attached hereto and made a part hereof as Exhibit "A", and under which Lease the Lessee occupies the premises known as the Brookmont Elementary School, 4800 Sangamore Road, Bethesda, Maryland; and

WHEREAS, Lessor and Lessee have agreed to a one-year and one month extension of the Lease by letters dated June 25, 1992, which is attached hereto and made a part hereof as Exhibit "B", and August 23, 1993, which is attached hereto and made a part hereof as Exhibit "C"; and

WHEREAS, the lease extension terminates on September 30, 1993; and

WHEREAS, Lessor and Lessee acknowledge that the above referenced extensions do not extend the date of the commencement of the first option period; and

WHEREAS, pursuant to the Lease, paragraph 3, Lessee has the right to renew the Lease for two additional consecutive five (5) year periods; and

WHEREAS, Lessee wishes to renew the Lease for the first five (5) year period; and

WHEREAS, the term of the first five (5) year option shall commence September 1, 1992 and terminate August 31, 1997; and

WHEREAS, by letter dated August 27, 1993, attached hereto and made a part hereof as Exhibit "D", Montgomery County Public Schools (MCPS) agreed it would not request

referred to as Brookmont Elementary School unless it is specifically stated otherwise the lessee for the unamortized portion of capital expenditures that would be valuable to the school system; and

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WHEREAS, Lessor and Lessee acknowledge that at the end of the first five (5) year period, Lessee has the right to renew this Lease for one more five (5) year period; and

WHEREAS, the Lease provides that in the event Lessee elects to exercise its right to renew, rental rates and provisions for any renewal shall be negotiated and agreed to by both parties at the time of renewal.

NOW THEREFORE, Lessee hereby elects to renew the Lease for the first five (5) year option period subject to new rental rates and certain amendments of the Lease agreed upon by Lessor and Lessee as follows:

I. Paragraph 6 entitled RENT in the Lease is amended as follows:

During the lease year commencing on September 1, 1993, Lessee shall pay Rent to the Landlord in the annual amount of EIGHTY-FOUR THOUSAND NINE HUNDRED DOLLARS AND 00/100 (\$84,900.00) payable in equal monthly installments in the amount of SEVEN THOUSAND SEVENTY-FIVE DOLLARS AND 00/100 (\$7,075.00).

The first monthly payment hereunder shall be due on September 1, 1993. All payments thenceforth shall be due and payable on the first day of each month thereafter during the lease term to Montgomery County Revenue Division, P. O. Box 6210, Rockville, Maryland 20850.

The remaining provisions of Paragraph 6 of the Lease as it applies to rent payments shall remain in full force and effect without any change or modification.

II. Paragraph 7 entitled Consumer Price Index in the Lease is amended as follows:

CONSUMER PRICE INDEX: It is agreed between the parties that the annual rent payable by the Lessee shall be adjusted at the beginning of the second lease year (for purposes of this provision, Lease Year shall be defined as September 1 through August 31), and every lease year thereafter, as determined by the application of the following formula:

To the annual rent payable by Lessee during the previous lease year shall be added that sum representing one hundred (100%) percent of the resulting amount, if any, after multiplying said annual rent payable during the previous lease year by a

fraction, the numerator of which shall be the index now known as the "U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index for all Urban Consumers, National Average, All Items (1984=100)", for the month prior to the last month of the previous lease year and denominator of which shall be said index for the month prior to the first month of the previous lease year, and subtracting from such product the annual rent payable during the previous lease year.

The resulting new annual rent shall in no event be less than the annual rent payable during the preceding twelve months, shall not exceed the annual rent payable during the previous lease year by more than 6%, and shall be payable in twelve equal installments on the first day of each month of the applicable year.

In the event the CPI is discontinued, ceases to incorporate a significant number of the items now incorporated therein, or if a substantial change is made in such CPI, the parties hereto shall attempt to agree on an alternative formula and if agreement cannot be reached the matter shall be submitted to arbitration under the rules of the American Arbitration Society then in effect.

III. Paragraph 9 entitled USE OF MULTI-PURPOSE ROOM BY THE COMMUNITY, DEPARTMENT OF RECREATION AND OTHER COUNTY AGENCIES in the Lease is amended as follows:

Subject to a nominal charge for utilities to be jointly determined by Lessee and the Interagency Coordinating Board, the Multi-Purpose Room shall remain available to the community during the term of this Lease. Lessee agrees to make the Multi-Purpose Room available Monday through Saturday during the daytime from 9:00 a.m. to 6:00 p.m., but only when such use will not interfere with Lessee's previously scheduled daytime activities. For the purposes of this Lease, "Lessee's activities" are defined as those programs and activities directly related to the Lessee's approved occupants. All requests to use the Multi-Purpose Room will be channeled directly to the Interagency Coordinating Board and placed according to the priorities indicated in the Guidelines for the Community Use of Educational Facilities and Services. Lessee understands and agrees that no rental of the Multi-Purpose Room is to be made except through the Interagency Coordinating Board. Lessee agrees to provide the Interagency Coordinating Board with a schedule of its activities for the Multi-Purpose Room on a semi-annual basis, i.e., the Fall/Winter schedule (October-March) must be submitted by September 15 and the Spring/Summer schedule (April-September) by February 1. Times not scheduled

for daytime activities by the Lessee shall be presumed to be available for community use. Lessee agrees to make the Multi-Purpose Room available Monday through Saturday at night from 6:00 p.m. to 11:00 p.m. and all day Sunday from 9:00 a.m. to 11:00 p.m., but only when such use will not interfere with Lessee's previously scheduled activities during these times, as submitted by the Lessee in its semi-annual schedule. The above notwithstanding, the Lessee agrees to honor and allow any activities scheduled in the Multi-Purpose Room through the Interagency Coordinating Board prior to the date of execution of this Lease. Any use for the Lessee deviating from its previously submitted schedule will be subject to the approval of the Interagency Coordinating Board. Lessee agrees to make the Multi-Purpose Room available, upon request from the Interagency Coordinating Board, to the Montgomery County Supervisor of Elections for use as a polling facility during the day, if necessary, during primary, general and special elections, irrespective of Lessee's prior scheduled activities. The Lessor shall hold the Lessee harmless and defend the Lessee from any and all claims of liability arising by virtue of the community or Lessor's use of the leased premises, parking facilities, athletic fields, adjoining grounds or any portion thereof, except for damage or liability arising from the negligent acts or omissions of the Lessee, Lessee's agents, employees, guests or contractors.

IV. Paragraph 12 entitled CODE MANDATED AND CAPITAL IMPROVEMENTS in the Lease is amended as follows:

CAPITAL IMPROVEMENTS:

- (A) Elective Capital Improvements and Structural Alterations: Lessee shall not undertake any structural alterations, changes or improvements to the Leased Premises without the prior written consent of the Lessor, which consent shall not be unreasonably withheld. Once Lessor's consent has been obtained, Lessee shall be responsible for the acquisition of any and all necessary permits and for the observation of all building and zoning ordinances and regulations then in effect. Failure to adhere to any applicable ordinances or regulations shall be deemed to be a breach of this lease. The cost of any such alterations or improvements shall be borne solely by the Lessee.
- (B) Non-Elective Capital Improvements: In the event that it becomes necessary for Lessee to make substantial, non-elective capital improvements to the Leased Premises, and should the life of such work, as determined by the IRS depreciation life span schedule, exceed the date of lease termination or the date of Lessee's vacating the Leased Premises, whichever date is the latest, Lessor

shall, subject to funds being available in a current or future approved and adopted Operating Budget of the Department of Facilities and Services, reimburse Lessee for a percentage of the cost of said work, pro-rated to reflect the balance of the remaining life of the improvement beyond the date of lease termination or the date of Lessee's vacating of the Leased Premises, whichever date is latest. Lessor will make good faith efforts to secure appropriations necessary for said reimbursement. Said reimbursement shall be made in the form of a lump sum payment to the Lessee upon availability of funds, and only upon presentation to the Lessor of documentation as to the cost of the improvements and the contractor's or manufacturer's warranty, active and/or expired. Lessee shall not be required to provide Lessor with a warranty in the event a warranty is not available for the type of work for which Lessee seeks reimbursement. Lessor shall not reimburse Lessee for any non-elective capital improvements to the premises in the event Lessee vacates the premises before the end of the Lease term whether voluntarily or pursuant to legal action for breach. This provision for non-reimbursement shall not apply in the event Lessor exercises its right to terminate the Lease pursuant to Paragraph 39 herein. In the event Lessee receives a notice of termination pursuant to Paragraph 39 herein, and Lessee elects to vacate and surrender the premises prior to the date provided in the notice, Lessee's early surrender of the premises shall not be considered to be voluntary. Non-elective capital improvements shall include replacement of the roof, boilers, HVAC system, exterior structural walls and windows (excepting window pane replacement).

In no event shall Lessee be entitled to receive reimbursement from both Lessor and/or Montgomery County Public Schools for the same or like item or work of any nature or description.

- (C) Lessor's Approval and Inspection: In order to secure Lessor's approval of any structural alterations or improvements, Lessee shall submit to Lessor plans and specifications clearly setting forth the work to be performed. Lessor shall respond in writing within 45 days from receipt of plans and specifications. Lessor shall inspect the premises upon completion of the work to determine adherence to submitted specifications and compliance with applicable codes and regulations. In the event that the completed work is not reasonably satisfactory to Lessor, Lessee shall undertake any necessary corrections, at Lessee's risk and expense.

- (D) Approval of Montgomery County Public Schools: Lessee agrees that in accordance with Exhibit "D", Lessee will obtain the written approval of the Department of Facilities Management, Montgomery County Public Schools prior to making any structural alterations, changes, improvements, or replacements for which Lessee would seek reimbursement from Montgomery County Public Schools.

V. Paragraph 17 entitled LIABILITY, PROPERTY DAMAGE AND FIRE INSURANCE in the Lease is amended as follows:

- (A) Lessee agrees to obtain and maintain, during the full term of this lease, and any extension thereof, a policy of general liability insurance with a minimum limit of liability of \$1,000,000 (one million dollars) for bodily injury and property damage including fire legal liability issued by an insurance company licensed in the State of Maryland and acceptable to Lessor.
- (B) Lessee agrees to obtain and maintain, during the term of the lease, and any extension thereof, a policy of workers compensation and employers liability coverage in the amount of \$100,000 for bodily injury by accident (each person) or by disease (each person) and \$500,000 for bodily injury by disease (policy limits).
- (C) Lessee agrees to obtain and maintain, during the term of the lease, an All Risk Property policy covering 100% of the contents of the leased premises.
- (D) The general liability policy must list Montgomery County as additional insured and all policies must provide Montgomery County 60 days notice of cancellation.
- (E) The Lessee shall, within ten (10) days from execution of this instrument, deliver to Lessor a certificate(s) of insurance evidencing the coverages enumerated above. The certificate(s) must be issued to Montgomery County Government, Department of Facilities and Services, Office of Real Estate Management, 110 N. Washington Street, Rockville, Maryland 20850. Lessee has the obligation to assure that Lessor always has a valid unexpired Certificate of Insurance.

VI. Paragraph 18 entitled LETTER OF CREDIT in the Lease is amended as follows:

INDEMNITY BOND: Upon the request of Lessor, concurrent with the effective date of the Lease or at any time during the term of this lease, Lessee agrees to obtain and maintain an executed miscellaneous indemnity bond in the amount of eight (8) months' rent for the current lease year to remain in full force and effect throughout the remainder of the lease term, as security for the faithful performance of all the terms and conditions of this Lease.

For good cause shown, Lessor shall have the right, but not the obligation, to request such a bond. Lessor, in its sole discretion, may accept an appropriate substitute surety. Lessee shall, within thirty (30) days from the date of the request by the Lessor, deliver to Lessor the said surety, evidencing the coverage hereinabove stated. Failure to deliver the bond or surety as required is considered by Lessor to be a material breach of the Lease.

VII. Paragraph 24 entitled ASSIGNMENT AND SUBLEASING in the Lease is amended as follows:

- (A) Lessee shall not be entitled to and shall not assign this Lease or sublease all or any part of the Leased Premises without the Lessor's express written consent thereto which consent shall not be unreasonably withheld.
- (B) The Lessor's written consent to prospective sublessees or assignees shall be obtained in the following manner:
 - (i) The Lessee shall submit to Lessor copies of the proposed occupancy or sublease agreements, a description of the activities of the proposed sublessees or assignees and any other information pertinent to the proposed sublessee's or assignee's use and occupancy, as available.
 - (ii) The Lessor shall respond in writing not later than thirty (30) days after receipt of the information cited in Paragraph 24(B) (i) hereinabove.
- (C) (i) The Lessor and Lessee agree that the subleasing or assignment of all or any portion of the premises by the Lessee shall have as its primary goal the recovery of reasonable operating and leasing expenses incurred by Lessee in the operation, maintenance and administration of the leased premises. The Lessee therefore agrees that any rental amounts charged to sublessees within the premises shall be limited to the sublessees prorated share of actual operating, maintenance and administrative

expenses incurred by Lessee, plus an increment for actual rental paid by the Lessee to the Lessor in accordance with the provisions of Paragraph 6 hereinabove.

(ii) Lessee acknowledges and agrees that the Lessor shall not approve any assignment, sublease or transfer of any right or interest in all or any portion of the Leased Premises if such an assignment, sublease or transfer results in any profit or financial gain in excess of ~~the~~ ^{the costs and} expense ~~that~~ ^{recovery} permitted under (C)(i). Pursuant to the provisions of this Paragraph 24, the Lessor may require the Lessee to provide written evidence of compliance hereunder.

(D) In the event Lessor accepts and approves any assignment, sublease or transfer, Lessee shall nonetheless remain responsible for the payment of all sums and the performance of all obligations required of the Lessee.

VIII. Paragraph 35 entitled Non-Discrimination in the Lease is amended as follows: Landlord agrees to comply with the non-discrimination in employment policies in County contracts as required by Section 11B-3 and Section 27-19 of the Montgomery County Code 1984, as amended, as well as all other applicable state and federal laws and regulations regarding employment discrimination. The Landlord assures the County that in accordance with applicable law, it does not, and agrees that it will not discriminate in any manner on the basis of age, color, creed, national origin, race, religious belief, sexual preference or handicap.

The following new provisions are added as additional conditions and covenants of the Lease:

Paragraph 39. TERMINATION FOR CONVENIENCE OF MCPS: This Lease Amendment and all obligations hereunder may be terminated by Lessor at any time after the third year of the Lease term upon 240 days notice in the event the Montgomery County Public Schools determines a need for this facility. Lessor and Lessee agree that Lessee shall not be required to vacate the premises during a school year (September 1 through June 30). Lessor will make ^{a good faith} ~~its best~~ efforts to negotiate a longer notice period with the Board of Education. In the event of agreement between Lessor and the Board of Education on a notice period longer than 240 days, appropriate amendments will be made to the Lease.

Paragraph 40. RESIDENT AGENT: The Resident Agent for the Lessee is Chasman Realty Trust and its address for receipt of notice and service of process is 4500 Sangamore Road, Bethesda, Maryland 20816.

Immediate notice shall be given to Lessor by Lessee of any change in the resident agent or address for receipt of notices, as provided herein.

Paragraph 41. PROHIBITION OF HAZARDOUS SUBSTANCES: The Lessee agrees to not store or bring hazardous substances onto the premises. The Lessee shall be responsible for any personal injuries or personal and real property damage as a result of any hazardous substance being brought on the premises by the Lessee, its agents, contractors, employees or guests.

Paragraph 42. NON-MARKETABILITY OF LEASE: Lessee acknowledges and agrees that this Lease is non-marketable. Lessee may not market, sell, trade, assign, or transfer any right, title or interest in this Lease to any third party, except as provided for in Paragraph 24 herein.

Paragraph 43. EARLY TERMINATION: Lessor and Lessee agree that this Lease and all obligations hereunder (except for those obligations which may continue or extend beyond termination of the Lease) may be terminated by Lessee at any time during the Lease term or any renewal hereof by the giving of written notice by Lessee to Lessor at least ninety (90) days before such termination occurs.

Lessor and Lessee agree that all terms, conditions and covenants in the Lease dated July 18, 1983, shall remain in full force and effect without any change or modifications except as otherwise indicated in this Amendment.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be properly executed.

WITNESS:

LANDLORD:
MONTGOMERY COUNTY, MARYLAND

By: Kathy Barber

By: Alastair W. Arthur
Alastair McArthur, Deputy
Chief Administrative Officer

Date: 11/8/93

WITNESS:

LESSEE:
THE WASHINGTON WALDORF SCHOOL,
INCORPORATED

By: John P. Branner

By: John P. Branner
Title: Chairman, Board of Trustees

Date: 9/30/93

RECOMMENDED BY:

By: Gloria W. Kratz
Gloria W. Kratz, Chief
Office of Real Estate Management

Date: 10/29/93

APPROVED AS TO FORM & LEGALITY
OFFICE OF COUNTY ATTORNEY

By: Amor M.

Date: 10/6/93

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